

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

**ZHAOYIN WANG,  
Plaintiff,**

**v.**

**BETA PHARMA, INC., DON ZHANG,  
AND ZHEJIANG BETA PHARMA  
CO., LTD.,  
Defendants.**

**Civil Action No. 3:14-cv-01790-VLB**

**DECEMBER 5, 2014**

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO TRANSFER**

**THIS ACTION TO THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF NEW JERSEY**

Pursuant to 28 U.S.C. § 1404(a), defendants Beta Pharma, Inc. ("Beta Pharma") and Don Zhang (collectively, "Defendants") hereby move to transfer this action to the United States District Court for the District of New Jersey. Such transfer is appropriate because there is currently no relevant connection between the case and Connecticut, but there are substantial connections between this case and New Jersey. Plaintiff Zhaoyin Wang is a resident of Canada. Defendants Beta Pharma, Inc. and Don Zhang reside in New Jersey. Besides the location of Plaintiff's counsel's office, no aspect of this case has any connection to Connecticut. Therefore, a transfer of venue to the U.S. District Court for the District of New Jersey is appropriate under 28 U.S.C. § 1404(a) because such a transfer will promote convenience and justice.

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## **STATEMENT OF FACTS**

### **I. All Parties are Out of State**

None of the parties in this case reside, or are located, in Connecticut. Plaintiff resides in Canada. Complaint, First Count, ¶ 9. Beta Pharma's principal place of business is in New Jersey. Affidavit of Don Zhang ("Zhang Aff."), ¶ 4; Complaint, First Count, ¶ 1. Don Zhang, president of Beta Pharma, resides in Plainsboro, New Jersey, and works at Beta Pharma's Princeton office. Zhang Aff., ¶¶ 2, 5; Complaint, First Count, ¶ 3. Zhejiang Beta Pharma Co., Ltd. ("ZJBP") is a company formed, and doing business, in the People's Republic of China. Complaint, First Count, ¶ 6.

### **II. The Alleged 2010 Agreement<sup>1</sup> Between Plaintiff and Beta Pharma, Inc.**

Plaintiff asserts that, "[o]n March 26, 2010 . . . [Beta Pharma] entered into a written partnership agreement with plaintiff, pursuant to which plaintiff was to perform professional services for Beta Pharma . . ." Complaint, First Count, ¶ 10. That purported agreement (the "2010 agreement"), which Plaintiff attached to his Complaint as Exhibit A, was between Plaintiff and Beta Pharma, Inc. Complaint, Exhibit A, p. 1, 3. In essence, the agreement was a job offer, as it stated: "You [Plaintiff] will be the CSO (Chief Scientific Office) of Beta Pharma . . . We look forward to your arrival at our company." *Id.* Don Zhang signed the agreement on behalf of Beta Pharma, Inc. *Id.* at p. 3. Under the purported agreement,

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<sup>1</sup> Defendants do not concede the validity of any aspect of the 2010 agreement, or the validity of any facts alleged in the Complaint, and reserve their right to make any and all legal or factual objections to the Complaint.

Plaintiff was to receive compensation in the form of Beta Pharma and ZJBP stock. *Id.* at p. 1. Allegedly, “[i]n reliance on the promises contained in the [2010 agreement],” Plaintiff formed Beta Pharma Canada (“BPC”), a drug discovery company. Complaint, First Count, ¶ 11.

According to Plaintiff, Beta Pharma breached the 2010 agreement by, among other things, failing to pay Plaintiff’s salary and by not delivering the promised shares to Plaintiff. Complaint, First Count, ¶ 12. Plaintiff also asserts virtually the same claim against Don Zhang. Complaint, Second Count.

III. This Case Involves New Jersey-Based Facts, Documents, and Parties

In November 2011, Beta Pharma moved its offices from Connecticut to Princeton, New Jersey. Zhang Aff., ¶ 7. Beta Pharma currently has an office in Princeton, New Jersey and a research facility in Monmouth Junction, New Jersey. *Id.* at ¶¶ 4, 6. Since November 2011, all of Beta Pharma’s computers, and nearly all of its documents, have been located in New Jersey. *Id.* at ¶ 8. Also, since November 2011, all of Beta Pharma’s employees have worked in New Jersey. *Id.* at ¶ 9.

IV. Procedural History

Plaintiff filed this lawsuit with the Superior Court of Connecticut on November 10, 2014. Defendants removed the case on December 1, 2014 to this Court. Defendants now submit this Motion to Transfer and request that the Court transfer this action to the District of New Jersey.

### LEGAL ARGUMENT

I. Under 28 U.S.C. § 1404(a), this Court Should Transfer this Action to the District Court for the District of New Jersey

This Court should transfer this action to the District of New Jersey because the case could have been brought there, and such a transfer will promote convenience and the interests of justice.

Under 28 U.S.C. § 1404(a), “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought...” Section 1404(a) “prevent[s] the waste of time, energy and money and . . . protect[s] litigants, witnesses and the public against unnecessary inconvenience and expense.” *United States Surgical Corp. v. Imagyn Medical Technologies, Inc.*, 25 F.Supp.2d 40, 46 (D.Conn. 1998) (quotation and citations omitted). This statutory provision “reposes considerable discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness.” *Costello v. Home Depot U.S.A., Inc.*, 888 F.Supp.2d 258, 266 (D.Conn. 2012) (quoting *Red Bull Associates v. Best Western Int’l*, 862 F.2d 963, 967 (2d Cir. 1988)); see also *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 106 (2d Cir. 2006) (“District Courts have broad discretion in making determinations of convenience under Section 1404(a) . . .”).

The analysis on a motion to transfer involves a two-part inquiry, where the Court asks: “(1) whether an action ‘might have been brought’ in the proposed transferee forum, and, if so, (2) whether the transfer promotes convenience and justice.” *Costello*, 888 F.Supp.2d at 266. Both criteria are met here.

**A. Plaintiff Could Have Filed this Action in New Jersey Because Venue is Proper in New Jersey, and Defendants are Subject to Personal Jurisdiction in New Jersey**

When analyzing whether a case “might have been brought” in “the proposed transferee forum, the court must determine whether the defendants were subject to personal jurisdiction in that forum when the action was commenced and whether venue would properly lie there.” *Mak Marketing, Inc. v. Kalapos*, 620 F.Supp.2d 295, 307-308 (D.Conn. 2009); see also *Costello*, 888 F.Supp.2d at 266; *Wilson v. DirectBuy, Inc.*, 821 F.Supp.2d 510, 515 (D.Conn. 2011) (citing *Farrell v. Wyatt*, 408 F.2d 662, 666 (2d Cir. 1969)).

**1. The Proper Defendants are Subject to Personal Jurisdiction in New Jersey**

First, there is no question that, under Connecticut (or New Jersey) law<sup>2</sup>, both Don Zhang and Beta Pharma are subject to personal jurisdiction in New Jersey. This is because Don Zhang resides and works in New Jersey, and Beta Pharma’s principal place of business is in New Jersey. Zhang Aff., ¶¶ 4, 5.

Although Plaintiff named ZJBP as an additional defendant, there is no need to consider ZJBP in this transfer analysis because, as explained below, ZJBP is a fraudulently joined defendant.

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<sup>2</sup> See *Volkswagenwerk Aktiengesellschaft v. Beech Aircraft Corp.*, 751 F.2d 117, 120 (2d Cir. 1984) (explaining that “personal jurisdiction in a diversity case is determined by the law of the state in which the district court sits.”) (citing *Arrowsmith v. U.P.I.*, 320 F.2d 219 (2d Cir. 1963)).

**2. The District of New Jersey is a Proper Venue**

Second, the District of New Jersey is a proper venue for this action. Under 28 U.S.C. § 1391(b), a “civil action may be brought in—1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located . . .” Here, venue is proper in New Jersey under that statutory provision.

All properly joined Defendants reside in New Jersey. First, Don Zhang, a natural person, resides in New Jersey, as he lives, works, and thus is domiciled there. 28 U.S.C. § 1391(c)(1) (“a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled”); *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989) (“For adults, domicile is established by physical presence in a place in connection with a certain state of mind concerning one’s intent to remain there.”) (citing *Texas v. Florida*, 306 U.S. 398, 424 (1939)); Zhang Aff., ¶ 5. Defendant Beta Pharma also resides in New Jersey because, as discussed above, it conducts business in New Jersey and is subject to personal jurisdiction in that state. 28 U.S.C. § 1391(c)(2)(“[A]n entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question...”); Zhang Aff., ¶ 4. Under the first prong of 28 U.S.C. § 1391(b), the District of New Jersey is a proper venue because all proper Defendants reside in New Jersey.

As set forth in greater detail in Defendants' Notice of Removal [Doc. 1], ZJBP was fraudulently named as a defendant because the 2010 agreement, which Plaintiff attached to his Complaint, is with Beta Pharma, not ZJBP. Because ZJBP constitutes a fraudulently joined defendant, this Court should not consider ZJBP for any purposes in this transfer analysis, including jurisdiction or venue. *Briarpatch Limited, L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 302 (2d Cir. 2004) (explaining that, for the purposes of diversity of citizenship, "courts overlook the presence of a non-diverse defendant if from the pleadings there is no possibility that the claims against that defendant could be asserted in state court"); *Pecorino v. Vutec Corp.*, 934 F.Supp.2d 422, 431 (E.D.N.Y. 2012) (explaining that fraudulent joinder precedent in the context of remand is highly instructive to a fraudulent joinder analysis in the context of a motion to transfer).<sup>3</sup>

***B. Transferring this Action to the District of New Jersey Will Promote Convenience and Justice***

Defendants also satisfy the second prong of the transfer analysis, which asks "whether a transfer promotes convenience and justice." *Costello*, 888 F.Supp.2d at 267. As stated above, "[d]istrict courts have broad discretion to make case-by-case determinations of convenience and fairness." *Id.* (citing *In re Cuyahoga Equipment Corp.*, 980 F.2d 110, 117 (2d Cir. 1992)).

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<sup>3</sup> If ZJBP were considered, venue would not be appropriate in Connecticut because ZJBP is a Chinese company with offices in China and thus is not subject to personal jurisdiction in Connecticut.

When analyzing whether a transfer promotes convenience and fairness, a court considers many different factors, including: “(1) the plaintiff’s choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, (7) the relative means of the parties, (8) the forum’s familiarity with the governing law, and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.” *Costello*, 888 F.Supp.2d at 267 (citing *D.H. Blair & Co.*, 462 F.3d at 106–107; *Hanninen v. Fedoravitch*, 583 F.Supp.2d 322, 331 (D.Conn. 2008)). Here, these factors weigh heavily in favor of transferring this action to the District of New Jersey.

**1. *Plaintiff’s Choice of Forum Receives Little Weight Because Plaintiff Does Not Reside in (or Anywhere Near) that Forum***

While a plaintiff’s choice of forum typically receives some deference in a 1404(a) analysis, “[w]hen plaintiffs choose a forum that is not any plaintiff’s home forum, that choice of forum is afforded considerably less weight.” *Costello*, 888 F.Supp.2d at 267 (citing *Iragorri v. United Technologies*, 274 F.3d 65, 71 (2d Cir. 2001)).

Plaintiff resides in Canada, not Connecticut, and, upon information and belief, has no connection to Connecticut (other than through his lawyer, Jonathan Katz). Complaint, First Count, ¶ 9. This factor does not weigh in favor of the case remaining in Connecticut.



**2. Connecticut Does Not Constitute a Convenient Venue for Witnesses**

Since Plaintiff just recently filed this action, the parties have not engaged in discovery, and it is too early to determine who, beyond the parties themselves, will serve as witnesses. Nonetheless, because neither of the alleged parties to the 2010 agreement (Plaintiff and Beta Pharma) resides in Connecticut, it is unlikely that the parties will rely upon any non-party witnesses from that state. Conversely, potential witnesses, including Don Zhang, reside in (or near) New Jersey, not Connecticut. Zhang Aff., ¶¶ 5, 9; Complaint, First Count, ¶ 2. In fact, all of Beta Pharma's employees work in New Jersey. Zhang Aff., ¶ 9. If anything, this factor weighs against the case remaining in Connecticut.<sup>4</sup> *Costello*, 888 F.Supp.2d at 267-268 ("Discovery specific to these plaintiffs has not yet begun, and neither party has specifically identified any non-party witnesses. The court notes, however, that it seems unlikely that any non-party witnesses from Connecticut will be called to establish the daily job responsibilities and activities of the non-Connecticut plaintiffs.").

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<sup>4</sup> It bears mentioning that, "[b]ecause neither party has identified any non-party witnesses, the availability of process to compel attendance of unwilling witnesses is neutral." *Costello*, 888 F.Supp.2d at 268 (citing *WorldCare Ltd. Corp. v. World Ins. Co.*, 767 F.Supp.2d 341, 367 n. 52 (D.Conn. 2011) (finding this factor to favor transfer even where neither party identified a non-party witness)).

**3. *The Relevant Documents are Located in New Jersey***

The next factor, location of the relevant documents, supports transferring this action to New Jersey. In short, the vast majority of documents that may relate to this case are located in New Jersey.

Beta Pharma moved to New Jersey in November 2011. Zhang Aff., ¶ 7. Since that time, nearly all of its records, and all of its computer systems, have been located in New Jersey. *Id.* at ¶ 8. Any documents responsive to discovery requests in this case will be located in New Jersey. For example, any communications regarding the alleged 2010 agreement, and any information on that agreement, would theoretically be found in New Jersey. Few relevant documents are in Plaintiff's possession, and such documents are not likely to be located in Connecticut. Because the documents are located in New Jersey, the District of New Jersey constitutes an appropriate transferee forum.

**4. *The District of New Jersey is the Most Convenient Forum for the Parties***

Analyzing each party's connections to New Jersey and Connecticut, New Jersey constitutes the most convenient forum for the parties. As discussed above, Beta Pharma's principal place of business is in New Jersey. Zhang Aff., ¶ 4. Likewise, Don Zhang lives and works in New Jersey. *Id.* at ¶ 5. For Defendants, New Jersey is certainly the most convenient place to litigate this action.

Plaintiff, on the other hand, resides in Canada and, to the best of Defendants' knowledge, has no connection to Connecticut. Complaint, First Count, ¶ 9. As compared to Connecticut, litigating this case in New Jersey will

provide Plaintiff with a more convenient forum. This is because, if transferred to New Jersey, this case will be venued in Trenton<sup>5</sup>, New Jersey, which is relatively close to at least four international airports into which Plaintiff can fly from Canada: Newark International Airport, JFK Airport, LaGuardia Airport, and Philadelphia Airport.

In fact, the only current connection between this action and Connecticut is Plaintiff's counsel's law office, which is located in New Haven, Connecticut. However, "[t]he convenience of counsel is not the appropriate consideration on a motion to transfer." *Costello*, 888 F.Supp.2d at 268 (citing *WoldCare Ltd. Corp. v. World Ins. Co.*, 767 F.Supp.2d 341, 363 n. 44 (D.Conn. 2011)).

That being the case, analyzing the parties' connection to the two states and the available airports, this factor clearly militates in favor of transferring the action to the District of New Jersey.

**5. *Although the Parties Entered the Alleged 2010 Agreement When Beta Pharma was Located in Connecticut, this Court Should Transfer the Action to the District of New Jersey Because the Parties Currently Have No Connection to that State***

Plaintiff may argue that, when he and Beta Pharma allegedly entered the 2010 agreement, Beta Pharma was located in Connecticut, so Connecticut

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<sup>5</sup> Both Beta Pharma (Princeton, New Jersey) and Don Zhang (Plainsboro, New Jersey) reside within the Trenton vicinage of the District of New Jersey. See <http://www.njd.uscourts.gov/content/why-must-i-serve-camden-newark-or-trenton> (explaining that the Trenton vicinage includes the following counties: "Mercer, Ocean, Monmouth, Somerset, Hunterdon, Warren, Southern-Middlesex").

constitutes the appropriate forum. This argument comes to no avail. Neither party is currently located in Connecticut, and any operative facts are located outside that state.

*Allied International Products, Ltd. v. Textron Industries, Inc.*, 382 F.Supp. 210 (S.D.N.Y. 1974), is illustrative on this point. In that case, the “plaintiff, an Indian corporation, sue[d] . . . to recover against the corporate and individual defendants for alleged breach of contract and of fiduciary duties arising out of a so-called Collaboration Agreement, dated June 6, 1964.” *Id.* at 211. The District Court for the Southern District of New York confronted the issue of whether it should transfer the case to the District of Rhode Island, or whether the case should remain in New York. *Id.* at 212.

In its analysis, the court noted, among other things, that: at the time of the litigation, the case had no connection with the Southern District of New York; “Textron’s corporate headquarters are in Providence”; and Textron “maintains all its documents relating to the Collaboration Agreement in those offices, and no employee of Textron connected with the contract nor any likely witnesses are in the Southern District at this time.” *Id.* at 212. With regards to the plaintiff, “prosecuting the action in New York or Rhode Island would be equally inconvenient.” *Id.* Although the “contract between the parties was negotiated in New York in several meetings between the parties,” “once the contract was signed, New York was no longer involved in the parties’ dealings.” *Id.* at 213. Evaluating these and other facts, the court determined that “the convenience of the parties and witnesses and the interests of justice require[d] that this case be

transferred as requested to the United States District Court for the District of Rhode Island.” *Id.*

Similarly, *United States Surgical Corp. v. Imagyn Medical Technologies, Inc.*, 25 F.Supp.2d 40, 45 (D.Conn. 1998), involved a claim of breach of an employment contract, where the contract was negotiated and executed in Connecticut. In its analysis, the Court explained, “virtually all of the witnesses to be called in this case reside in California,” and “most or all of the documents relevant to this litigation are located in California.” *Id.* at 46. The Court also noted that the defendant would suffer extreme inconvenience, including missed work, by litigating in Connecticut. *Id.* Although venue was proper in Connecticut, because California was a more convenient forum, the District Court for the District of Connecticut transferred the action to California. *Id.*

The same reasoning applies here. Although the 2010 agreement had arguably a tenuous connection to Connecticut based on the fact that Beta Pharma was located there in 2010, other New Jersey factors trump that Connecticut one, including the following:

- Beta Pharma’s corporate headquarters are in New Jersey. Zhang Aff., ¶ 4.
- Beta Pharma maintains nearly all of its documents in New Jersey. *Id.* at ¶ 8.
- No Beta Pharma employees or third-party witnesses are located in Connecticut. *Id.* at ¶ 9. All of Beta Pharma’s employees work in New Jersey. *Id.*

- Prosecuting the case in New Jersey would be more convenient for Plaintiff because that venue offers multiple international airports within a relatively short distance of the Trenton, New Jersey District Court.
- Litigating the case in New Jersey will result in less interruption to Beta Pharma's business (drug discovery targeting treatment of lung cancer).
- Connecticut currently has no relevant connection to this litigation.

As in *Allied International Products, Ltd.*, "the convenience of the parties and witnesses and the interests of justice require that this case be transferred." 382 F.Supp. at 213.

**6. *The Parties' Relative Means Does Not Weigh Heavily For or Against Transferring this Action***

The relative means of the parties should not impact the present Motion to Transfer. It is unclear, at this time, which of the parties has more financial means. In any case, litigating this action in New Jersey will not impose any additional financial burden on Plaintiff.

**7. *The Forum's Familiarity with Governing Laws Does Not Weigh Heavily For or Against Transferring this Action***

In this case, Plaintiff raises fairly straightforward state law claims: breach of contract; negligent misrepresentation; fraudulent misrepresentation; and breach of fiduciary duty. Even if the District of New Jersey must apply Connecticut law, the District of New Jersey is more than capable of analyzing and ruling on these claims. See, e.g., *Cavanaugh v. Bluebeard's Castle, Inc.*, 83

F.Supp.2d 284, 288 (D.Conn. 2009) ("Although Connecticut law may well govern this action, this factor does not weigh significantly in favor of retaining a Connecticut venue. Federal courts are accustomed in diversity actions to applying laws foreign to the law of their particular State. With WEST LAW and LEXIS, the laws of Connecticut are readily accessible to the District Court for the Virgin Islands."); *S-Fer Int'l, Inc. v. Paladion Partners, Ltd.*, 906 F. Supp. 211, 215-216 (S.D.N.Y. 1995) (district court in New York was capable of applying California law, where no complex issues of California law were involved).

8. *Trial Efficiency and the Interests of Justice Militate in Favor of Transferring this Case to the District of New Jersey*

Both trial efficiency and the interests of justice weigh in favor of transferring this case to the District of New Jersey. First, since Beta Pharma, Don Zhang, and other potential Beta Pharma witnesses are located in (or near) New Jersey, and since no witnesses are in Connecticut, having the case in New Jersey obviously will promote trial efficiency. Indeed, both Beta Pharma and Don Zhang are located very close to the courthouse for the Trenton vicinage of the District of New Jersey (within thirty minutes or so), where this action would be transferred.

Additionally, transferring this action constitutes the most just result. Given the present, substantial ties between Defendants and New Jersey – Beta Pharma's principal place of business is there, it transacts business there, and Don Zhang works and lives there – and the nonexistent connections between the parties and Connecticut, transferring the action to New Jersey will promote the interests of justice. In fact, such a transfer will result in less business interruption for Defendants, but will not impact Plaintiff's business (positively or

negatively) at all. If the case is venued in New Jersey, Defendants can more easily attend to this action while carrying on their drug discovery business regarding treating lung cancer. See *U.S. v. General Motors Corp.*, 183 F.Supp. 858, 861 (S.D.N.Y. 1960) ("Defendant's convenience must be viewed in light of not only the degree to which its business will be disrupted by trial in one forum rather than another, but also its cost of transporting to a city other than their origin (and maintaining therein) people, files and objects."). For these reasons, and for the reasons discussed throughout this Brief, granting this Motion to Transfer will promote justice.

#### CONCLUSION

While the location of Plaintiff's counsel's office is the only connection between this case and Connecticut, as discussed above, there are numerous, important connections between this case and New Jersey. Transferring this case to the District of New Jersey will promote convenience and constitute a just result. For the reasons set forth in this Brief, Defendants respectfully request that this Court grant Defendants' Motion to Transfer.

DEFENDANTS BETA PHARMA, INC. AND DON  
ZHANG

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**CERTIFICATION OF SERVICE**

I hereby certify that on December 5, 2014 a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/

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